IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

APPEAL NO.1190 OF 2001

IN

WRIT PETITION NO.855 OF 1995

...

Harish K. Bhandari ...Appellant

v/s.

Satyawati Pandurang Nandivkar

and ors. ...Respondents

...

Mr.M.A.Dharmaraj for the Appellant.

Mr.C.N.Chavan for Respondents Nos.1, 2, 4 & 5.

Mrs.Madhubala Kajale AGP for Respondents Nos.6 & 7.

...

CORAM: D.K.DESHMUKH &

J.H.BHATIA, JJ.

DATED: 13TH SEPTEMBER, 2007

P.C.:

1. By this Appeal, the Appellant challenges the order dated 9-11-2001 passed by the learned single Judge in Writ Petition No.855 of 1995. Operative part of the order of the learned single Judge reads thus:-

> In the result, the petition is allowed and made absolute in terms of prayer clauses (b), (d-1) and (d-2).

Prayer clauses (b), (D-1) & (D-2) reads as under:-

> (b) The Record and Proceedings in respect of the order dated 18-5-1993 (Issued on 25-5-1993) bearing No.NI.V.Y./1/ Mumbai Mandal/2765 by the Bombay Housing and Area Development Board and further order dated 19-9-1994 issued by the Estate Manager No.1 regarding the regularisation of tenement No.78/2688 in Nehrunagar, Kurla East, Bombay-24 in favour of Respondent No.3 may be

called or and after perusing the same the said order may be quashed and set aside. And after quashing and setting aside the said order the respondent No.1 and 2 may please be directed to implement the order dated 18-5-1993 issued on 25-5-1993 by the Chief Officer, Housing Board by the order No.M.I.G.I.-1/Mumbai Mandal/2766 in favour of the Petition No.1 and regularising the tenement No.78 or recording the name of the Petitioner No.1 in the said premises in the place of her husband Late Shri Pandurang Sakharam Nandivkar.

(D-1) That the order dated 12-10-1989 in a Case No.192.T.No.78/2688, Nehru Nagar No.CA/I/may be quashed and set aside and the Petitioners may be restored the possession of the tenement No.78/2680 Nehru Nagar, Kurla (E), Mumbai-24 after removing the Respondent No.3;

(D-2) That the delay in filing the present amendment Application in view of Appeal may kindly be condoned.

2. Perusal of prayer clause (b) shows that what was challenged by that prayer clause was the order dated 19-9-1994 issued by the Estate Manager No.1. Admittedly, copy of that order was not placed on record of the petition. Perusal of the judgment of the learned single Judge shows that neither that order has been referred by the learned single Judge nor has the learned single Judge given any reason for setting aside that order. Prayer clause (b) also shows that the order implementing the orders dated 18-5-1993 and 25-5-1993 was to be made only after setting aside the order dated 19-9-1994. Obviously, therefore, the order of the learned single Judge setting aside the order dated 19-9-1994 is an infirm order. Firstly, for setting aside that order without that order being before the learned single Judge and secondly for setting aside that order without giving any reason for doing so, obviously the order of the learned single Judge directing implementation of the order dated 18-5-1993 and 25-3-1993 cannot stand. Because, it is clear from perusal of the prayer clause (b) quoted above that even according to the Petitioner an order for implementation of those two orders dated 18-5-1993 and 25-5-1993 was to be made only after setting aside the order dated 19-9-1994.

3. One more aspect, in our opinion, that is relevant is that if the order dated 19-9-1994 was not before the learned single Judge and could not have been set aside by the learned single Judge, a petition simply for implementation of the orders dated 18-5-1993 and 25-5-1993 could not have been entertained by the learned single Judge, because the jurisdiction to entertain that petition will vest in the Division Bench.

3. Perusal of prayer clause (d-1) shows that by that prayer clause order dated 12-10-1989 was challenged. The petition was filed in January, 1995. That petition was filed after a period of more than 5 years after that order was made. The order of the learned single Judge does not anywhere disclose that the learned single Judge has considered the aspect of latches on the part of the Petitioner in challenging that order. In our opinion, therefore, without considering the aspect of latches, the learned single Judge was not justified in setting aside the order dated 12-10-1989.

4. So far as prayer clause (d-2) is concerned, bare

perusal of that prayer clause shows that it is meaningless prayer and the fact that the learned single Judge has made that prayer clause absolute shows that the order of the learned single Judge suffers from non-application of mind.

5. For all these reasons, in our opinion, the order made by the learned single Judge is liable to be set aside. It is accordingly set aside. However, we make it clear that this order will not come in the way of the Petitioner in adopting the appropriate remedy for enforcement of any rights that she may have.

. Appeal disposed of.

(D.K.DESHMUKH, J.)

(J.H.BHATIA, J.)